

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICROSOFT CORPORATION, Plaintiff, v. DAUBEN, INC., Defendant.	§ § § § § § § §	Civil Action No. 3:08-CV-98 -BH
--	--------------------------------------	--

SCHEDULING ORDER

Pursuant to the District Court’s *Order*, filed April 8, 2008, this matter has been transferred to the undersigned United States Magistrate Judge for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c). Pursuant to Fed.R. Civ.P. 16(b) and 26(f), the court’s Civil Justice Expense and Delay Reduction Plan (Misc. Order No. 46), and the local civil rules, and after having considered any proposals submitted by the parties, the court enters this scheduling order.

I. PRETRIAL DEADLINES

A. Joinder of Parties

All motions for leave to join parties must be filed no later than **July 7, 2008**.

B. Amendment of Pleadings

All motions for leave to amend pleadings must be filed no later than **July 7, 2008**.

C. Discovery and Discovery Motions

All discovery shall be initiated in time to be **completed** by **October 6, 2008**. Any motions to compel discovery must be filed no later than **September 1, 2008**, in order to allow sufficient time for determination prior to the expiration of the discovery period.

D. Expert Witnesses

Any party who bears the burden of proof on an issue shall designate its expert witnesses and provide expert reports to the other party no later than **July 28, 2008**.

Any party without the burden of proof on an issue shall designate its responsive expert witness and provide expert reports to the other party no later than **August 28, 2008**.

Rebuttal experts must be designated within twenty (20) days of the disclosure of an opposing expert.

Objections to expert witnesses under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), shall be filed no later than **December 1, 2008**. Objections not filed shall be deemed waived. Responses to the objections shall be filed no later than **December 15, 2008**.

E. Mediation

No later than **April 30, 2008**, the parties are to engage in mediation.¹ A party with full settlement authority up to the limits of the opposing party's demand must be present throughout the discussions.

F. Joint Estimate of Trial Length and Status Report

The parties must file a joint estimate of trial length and joint status report concerning the progress of settlement negotiations no later than **May 7, 2008**.

G. Dispositive Motions

No later than **November 3, 2008**, all dispositive motions shall be filed.

¹If the parties participate in mediation they may choose their mediator. If the parties cannot agree on a mediator, they must notify the Court and the Court will choose one.

H. Motions Not Otherwise Covered

A party must file a motion not otherwise covered by this order no later than **November 3, 2008**.

II. TRIAL DEADLINES

A. Trial

This case is set for trial on **March 2, 2009**. This is a special setting and will not be reset absent good cause.

B. Exchange of Proposed Pretrial Disclosures and Conference

No later than **January 26, 2009**, the parties shall exchange (but shall not file with the Court) their pretrial disclosure of witnesses and exhibits pursuant to Fed.R.Civ.P. 26(a)(3). The parties shall also exchange a complete set of marked exhibits.

No later than **February 2, 2009**, the parties shall meet face-to-face to confer regarding their proposed pretrial disclosures. The face-to-face requirement is not satisfied by a telephonic conference. At the face-to-face conference, the parties shall confer regarding their objections to the opposing party's disclosures. To the extent that both sides have listed and marked the same documents as exhibits, each of those exhibits shall be designated and re-marked as a "Joint Exhibit".

C. Filing of Final Pretrial Disclosures

The parties shall file their final Fed.R.Civ.P. 26(a)(3) pretrial disclosures no later than **February 9, 2009**.² Plaintiff's attorney shall be responsible for filing a list of joint exhibits, if any. The parties shall also provide the Court with a complete set of their marked exhibits (excluding joint exhibits), and Plaintiff's attorney shall be responsible for providing the Court with a complete set of marked joint exhibits. The parties shall also provide the Court with a list of exhibits to which no objection was made at the face-to-face conference. Joint exhibits and exhibits to which no objection was made will be pre-admitted at the pre-trial conference.

²Final pretrial disclosures should not differ from the initial pretrial disclosures exchanged earlier, except that they may omit previously designated materials and/or joint exhibits; they must not include new materials. Also, final pretrial disclosures may not be supplemented or amended beyond this deadline without leave of court, and parties must confer with the opposing party prior to seeking such leave.

D. Objections

No later than **February 9, 2009**, the parties shall also file with the Court: (i) any objections under Rule 32(a) to the use of a deposition designated by any other party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefore, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C) or to witnesses under Rules 26(a)(2)(A) and 26(a)(3)(A). **Objections not disclosed shall be deemed waived.** Responses to objections, if any, must be filed no later than **February 17, 2009**. When a jury trial has been requested, objections will be heard by the court at the pretrial conference. In the case of a bench trial, any objections will be addressed during the course of the trial.

E. Motions in Limine

The parties shall file any motions in limine no later than **February 9, 2009**. Responses to motions in limine, if any, must be filed no later than **February 17, 2009**.

F. Pretrial Materials

By **February 17, 2009**, the following pretrial materials shall be filed:

- (a) The requested jury instructions (annotated)³ or, in a non-jury case, the proposed findings of fact and conclusions of law shall be submitted filed by each party.
- (b) Proposed voir dire questions (to be asked by the Court). The parties will be permitted to address the jury panel for a limited time during the voir dire portion of the trial.
- (c) If either party wishes to utilize a jury questionnaire, the proposed questionnaire must be submitted to the Court at this time with a certificate of conference indicating whether opposing counsel objects to all or part of the questionnaire.

By **February 17, 2009**, a proposed joint pretrial order shall also be submitted by Plaintiff's attorney that covers each of the matters listed in Local Rule 16.4. The statement of stipulated facts should include those facts agreed to by the parties. If an attorney for either party

³"Annotated" means that each proposed instruction or conclusion of law shall be accompanied by citation to statutory or case authority (and/or pattern instructions). It is not sufficient to submit a proposed instruction or conclusion of law without citation to supporting authority. Because Fifth Circuit and Supreme Court cases are the only precedent binding on this Court, the parties should -- to the extent possible -- rely on these sources (and/or Fifth Circuit pattern instructions in proposing jury instructions).

does not participate in the preparation of the joint pretrial order, the opposing attorney shall file a separate pretrial order with an explanation of why the joint order was not submitted. *See* Fed.R.Civ.P. 16(f). When the joint pretrial order is approved by the Court, it will control all subsequent proceedings in the case.

In addition to filing or submitting the foregoing items in accordance with this Court's Electronic Case Filing system, the parties shall also forward electronic copies in either WordPerfect or Word format to the Court at ramirez_orders@txnd.uscourts.gov.

G. Pretrial Conference

A final pretrial conference is set for **February 27, 2009, at 10:00 A.M.** Each party shall be represented by at least one attorney who will conduct the trial and who has the authority to enter into stipulations and admissions that would facilitate the admission of evidence and reduce the time and expenses of trial. Fed.R.Civ.P. 16(d). The pretrial conference will be conducted in U.S. Magistrate Judge Ramirez's courtroom, Room 1566. **All parties must confirm their attendance at least two days prior to the hearing by contacting Courtroom Deputy Lisa Martin at (214) 753-2167.**

H. Settlement on the Day of Trial

To the extent that the parties enter into a settlement on the day of the trial, after the costs of assembling a jury panel have been incurred, the Court may assess the costs of the jury panel against the parties jointly.

Any questions regarding this order may be directed to Courtroom Deputy Lisa Martin at **214-753-2167**.

SO ORDERED, on this 10th day of April, 2008.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE